### COURT OF APPEALS DIVISION TWO OF THE STATE OF WASHINGTON

COURT OF APPEALS

Respondent,  v.  Jason Makson (your name)  Appellant.	STATE OF WASHINGTON  No. 5347784=II M  STATEMENT OF ADDITIONAL  GROUNDS FOR REVIEW  Output  Description of the statement of t
attorney. Summarized below are the ac	have received and reviewed the opening brief prepared by my ditional grounds for review that are not addressed in that brief. I tatement of Additional Grounds for Review when my appeal is
	Additional Ground 1
The attached pages are my pro	ose Statement of addition grounds for sevieur
	Additional Ground 2
:	
If there are additional grounds, a brief s	summary is attached to this statement.
Date: 02-28-2020	Signature: Jason Watson
Form 23	J

Ground# 1- conflict of interest.

Defence counsels proformance was deficient where he failed to challenge the legality for the initial traffic stop.

The traffic stop was for alledged traffic violations, yet there is nothing preserved in the record to confirm this

aside from the officers self serving statements.

The officers stated they reached speeds of up to 70 mph in order to catch up to the defendants rehicle, that statement proves only that the officers were speeding, it doesn't prove the defendant was speeding.

There was no jadax or lazer equipment used to clock
The defendants speed, and the officers issued no citations for

any alledged traffic Violations.

The officers used these alledged traffic violations as a pretext to stop the defendants vehicle in order to investigate the defendant and his private affairs. By not challenging the validity of the traffic stop, this allowed the H - Amendment violations to be conducted by these roque officers.

Without the teaffix violations the officers had no reason to arrest the defendant. Everything after this illegal arrest is

fruits of the poisonous tree.

See: Wong 3 un V. United states

Failing to challenge traffic violations presudice the defendant by casting a shadow of implied guilt of the violations to the sury.

It is well settled that "some conflicts of interest so
affront the right to effective assistance of counsel as to
constitute a perse violation of the sixth Amendment.

United States V. Aiello, 900 F. 2d 528, 531 (2d cir. 1990)
(citing cuyler, 446 US at 349-50) such is the case where a
lawyer suffers from an actual conflict of interest that prevents
him they from presenting a vigorous defense of a defendant.

United States V. Eisen, 974 F. 2d 246 (2d. Cir. 1992)

"upon a showing of such a conflict, a defendant need not
demonstrate pressudice because a conflict inhibiting a lawyers
proformance is such an affront to the right to effective
assistance of counsel that .... I it I demonstrates a denial
of that right.

Most obviously, of course, is the complete denial of counsel. The presumption that counsels assistance is essential, requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial. Similarly, if counsel fail to subject the prosecutions case to meaningful adversarial festing, then there has been a denial of the sixth Amendment right that makes the adversarial process itself presumptively unreliable.

No specific showing was required in Davis V. Alaska,

415 U.S. 308, 39L. Ed. 2d 347, 943 ct. 1105 (1974)

Because petitioner had been denied the right of effective

Cross-examination "which would be constitutional error of

the list magnitude and no showing of want of presudice

would cure it. Id at 318,39LEd. 2d 347, 948 ct. 1105

Criting Smith V. Illinias, 390 U.S 129, 131, 19LEd. 2d. 956, 88 Sct.

748 (1968) and Brookhart V. Janis 348 U.S. 1,3 16/Ed. 2d. 314

The court has uniformly found constitutional error without any showing of presudice when counsel was either completely absent, or prevented from assisting the accused during a critical stage of the proceedings.

See! Geoleis V. United States, 425 U.S 80, 471 Ed 2d. 592, 96 Sct. 1330 (1976)

Herring V. Newlook, 422 U.S. 853, 456 Ed 2d. 593 95 Sct. 2250 (1975)

Brooks V. Tennessee, 406 U.S. 605, 612-613, 321 Ed 2d. 358, 92 Sct.

1891 (1972)

Hamilton V. Alabama, 368 U.S 52, 55 71 Ed 2d. 114, 82 Sct.

157(1961)



The pateol car wasn't equipped with any video or audio recording olevices that could have been used to substantiate the allegations that the defendant wasn't using turn signals or driving errotically, and no speed measuring devices such as radar or laser equipment were used to substantiate the allegations the defendant was speeding or driving at speeds above the posted speed limit.

There is no physical evidence at all to corroborate

these allegations, only the self serving statement provided

by these dishonest officers in order to sustify an illegal

traffic stop, an illegal warrantless-arrest and illegal

search and scizure of the defendant.

Ground #2 - Illegal Search and seizure -

Tacource Police illegally seized the defendant when they removed him from his vehicle to pat search him for weapons based solely on officer william Flippos hunch or intuition that there may be a gun in the car because he saw an empty holster. See V.R.P. 3.5/3.6 hearing-Testimony of officer william Flippo P.80 line 20 through P.81 line 15-

Also see Wong Sun V. United States.

Intuition is insufficient to establish peobable cause.

State V. Neth, 165 wn 2d. 177, 196 P. 3d 658, 2008 wash.

"Tial court ered in denying defendants motion to supress evidence discovered during a search of his car, because defendants mere possession of empty unused baggies did not constitute probable cause to search his car, even when occumpanied by nervous actions, inconsistant statements, criminal history and a large sum of money."

See! United States V. Cotnam, 88 F. 3d. 487, 495-96 C7 cic. 1996)

Suppression would occur only in cases in which "but for the

Search there would have been no accest at all."

Such is the case here, the officers entered the defendants

Vehicle and conducted an illegal search then applied for a search

warrant knowing they would recover a fire arm.

An officer is allowed to conduct a weapons frisk for officer safety per Terry V. ohio. The illegal search came directly after that "pat frisk" when the officer search the drivers area of the vehicle to look for a weapon.

The officers claim the gun was in "plain view", if that was the case then the officer would have been able to seiz the weapon sight then without having to get a search warrant. But that is not what happend, they searched the car then sought out a warrant knowing they would recover a firearm.

A dishonest officer has a strong incentive to persure himself if his subjective belief will control the admissibility of evidence.

United States V. Restrepo, 966 F. 2d. 964 (5ticis. 1992)
"Courts must determine whether information gained through
an illegal search influenced or motivated officers decision
to procure a search warrant".

### Ground#3 - Destruction of evidence Econstitutional errold Brady violation

Appointed total counsel conducted no independent investigation in order to build any kind of a defense 3 tratagy.

I was accested on 1-23-2018, the search warrant was executed about 16 hours later and about 2 hours after that the cor was released to Bills Towing and was sold 14 days later.

The car and everything in it was gone until I was able to

post bail in late September.

Once I learned this I brought it to my attorneys attention multiple times and my attorney never investigated or questioned why the police would choose to dispose of important physical evidence that would have brought to light the fact that the officers frabricated thier sworn tostimonies.

I had installed very heavy one-way millor window fint on that can that was very difficult to see through in broad day light and impossible to see through at night. I showed my attorney pictures of the car taken about a month before my accest, taken the day the fint was installed.

I also explained to him that it would have been impossible to see the drivers floor board through the front windshield from the vantage point the officers claim to have seen the gun

rom.

Tacoma Police Deportment went against its own proceedure when they disposed of physical evidence that was part of an active criminal prosecution in such a short period of time.

The disposal of the vehicle denied the defense counsel the approtunity to conduct its own investigation and denied the defendants right to due process.

Tacoma Police Department collected only the evidence they

wished to admit at trial and destroyed everything else.

The officers claimed they could see the gun in plain view through the windshiel from outside the vehicle, but they chose not to collect photo evidence to prove this when executing the search warrant. The only pictures that were take of the firearm were taken from a vantage point inside of the vehicle.

The Taxoma Police Department acted in bool faith when they disposed of the vehicle that was essentially the "crime scene" of the location fine which the crime occurred.

Taxoma Police Department had possession of the car

Parama Police department had possession of the car

Defense counsel failed to investigate the destruction of evidence that would have been exculpatory and would have shown that the officers exaggerated about thier ability to see through the windows of the vehicle.

By disposing of the rehicle the defendant was denied his right to due process to examine evidence that would have been exculpatory in nature in violation of Brady V. Maryland.

Constitutional law 3 840. 2 - Evidence favorable to accused - Duty

of prosecution to disclose -

Under the rule of Brody V. Monyland. (1963) 373 U.S. 83, 10 LEd. 2d. 215, 83 Sct. 1194! The suppression by prosecution of evidence favorable to an accused, upon request, violates due process where the evidence is material either to guilt or to punishment, irrespective of the goodfaith or boolfaith of the prosecution (1) The duty to disclose such evidence is applicable even where there has been no request by the accused (2) The duty to disclose encompasses impeachment evidence as well as exculpatory evidence. (3) such evidence is material if there is reasonable probability that, had the evidence been disclosed to the detense, the result of the proceedings would have been different, (4) and the rule encompasses evidence known andy to police investigators and not to prosecutor, and, therefore, the individual prosecutor has a duty to learn of any tavorable evidence known to others acting on the governments behalf, including the police.



Attached is a copy of the Authorisation to Tow/Impound and inventory record from the Tacoma police department indicating that on 07-23-2018 at 2228 hours My vehicle was impounded and on 07-24-2018 at 1633 hours that same vehicle was released to bills Towing.

I am also attaching a copy of the Tocoma Police
Department proceedure manual-please refer to the sections
for or pertaining to officer requested impounds and investigation

holds and for the release of investigation holds.

The proceedures outlined in the proceedure manual were not followed by Tacoma Police office Armondo Farinas #349, officer Farinas authorized the release of the vehicle from police impound even though he wasn't the assigned detective of the forensics technician, yet he authorized the destruction of physical evidence relevant to a criminal prosecution.

This my contention that officer Farings was untivated to release the vehicle in such a quick foshion and against Department proceedures because of the apparent evidentiary value

to the defendant.

Had the defense had access to the vehicle to collect it's own evidence, the vehicle would have proven that both officers featurated thier reports and that there was no way they could have seen anything through the mirror tinted windows.

Had this piece of critical physical evidence been preserved for the defense to examine this case would have been dismissed. - See State V. Vaster-

My court appointed counsel could not put forth a proper defense because he was denied the approtunity to examin all of the evidence relevant to this case.

T certify Cdeclare) under penalty of persury under the laws of the state of washington that the forementioned is true and correct. (RCW91.72.085)

signed 02-28-2020

Jason Matson #880448 46B130 Statford creek correction center 191 Constantine Way Aberdeen, Wa 98520

## TACOMA POLICE DEPARTMENT PROCEDURES MANUAL

09/2014 (9) Reviewed 2014 CALEA 61.4.3(a)(b)(c)

Ref.: DUI Enforcement "G"

# TRAFFIC - TOWING ENFORCEMENT AND PRACTICE

The Tacoma Police Department recognizes the importance of facilitating the safe and The Tacoma I once Department recognizes the importance of facilitating the safe and proper removal of vehicles, when necessary, from the roadway at a collision scene, or in any situation where a vehicle is obstructing normal, safe traffic flow. This includes the removal of abandoned vehicles from public property. A) Abandoned and Junk Vehicles (a)

A) Abandoned vehicles is governed by RCW 46.55.085 and TMC 8.23.

When an Officer finds a vehicle which appears to be abandoned, inoperable, unlicensed, When an Office, which appears to be abandoned, inoperable, unlicensed, or parked on a city street or city property for an unusual period of time, the Officer shall:

- Obtain a stolen check by license number or Vehicle Identification Number (VIN). If the vehicle returns as a reported stolen vehicle, proceed using the procedure for stolen vehicle recovery. (See Procedures Manual "Vehicle -Stolen Vehicle Recovery")
- Visually check the vehicle interior for any unusual circumstances ignition tampering, obvious signs of thest, etc. If such damage is noted, attempt to contact the current vehicle owner to determine the vehicle status. If this investigation determines this vehicle to be an unreported stolen vehicle, proceed using the procedure for motor vehicle theft reporting and stolen vehicle, recovery. (See Procedures Manual "Vehicle - Motor Vehicle Theft Report")
- If the vehicle is not stolen, has current Washington registration plates, and is not an immediate traffic hazard, the Officer may complete the process through to impound or notify the Abandoned Auto line for completion. Prior to leaving the scene, the Officer should complete a courtesy warning tag (PD 435) and place it under the windshield wiper or in a conspicuous place on the vehicle. The Officer should also chalk the vehicle's tire and use the windshield action writer officer should also vehicles the and use the windshield action write placing the date and officer's I.D. number in the rear window of the vehicle.
- The Officer or designee from this Department shall make a reasonable effort to The Officer of designed from this Department shall make a reasonable effort to contact the owner by telephone in order to give the owner the information on the warning tag. Vehicles not moved within 24 hours may then be impounded. The Officer shall note information regarding the contact attempt on the incident report if they complete the impound.

Citizen complaints of non-hazardous abandoned autos will be referred to the Tacoma

#### B) Impound Guidelines - Public and Private Property (6)

- 1) <u>Private Property</u> Police Officers do not have the authority to impound vehicles on private property unless:
  - It is the result of a collision and is not on the vehicle owner's property;
  - It is stolen:\*
  - It or its contents are of evidentiary value;\*
  - It is a Public Nuisance Vehicle as defined in Tacoma Municipal Code 8.23. (Requires Notice of Violation and Abatement. Refer to Public Works and/or Sector Community Liaison Officers).
- \* When a vehicle is to be recovered or impounded for the purpose of collecting evidence and is located on private property, the Officer may need to obtain a search warrant or consent of the property owner or resident, to enter that property and remove the vehicle. If it is unclear whether a search warrant is needed, a Supervisor will be contacted to make the decision.

Property owners may authorize towing of vehicles on their property at any time.

#### 2) Public Locations

a) Citizen Requested Tow

When a citizen is involved in an accident which disables their vehicle and the vehicle is not impeding traffic and does not constitute a hazard, or the citizen wants the Tacoma Police Department to request a tow truck for them for any other reason, the Police Officer will offer that citizen the opportunity to request their own tow company preference, if applicable. A listing of local tow companies can be accessed in the field via MDS by typing "INFO TOW" on a blank screen then hitting the enter key. The Police Officer will select the appropriate LESA Records channel and request the tow company that the citizen selected by name, advising LESA Records that the tow is a citizen's request for towing. The Officer will then add the requestor's name, vehicle information, and tow company requested into the CAD notes.

#### b) Officer Requested Impound

When a Tacoma Police Officer has a vehicle towed without the driver/owner's approval or selection of a towing company, the tow will be considered an Impound. The impounding of vehicles is governed by RCW 46.55.085/.113. When the vehicle appears to be a "junk vehicle" or "public nuisance vehicle" TMC 8.23 should be consulted.

3) Anytime an Officer requests a tow truck for an impound, the following procedure will apply:

#### Field Unit Responsibility

 Select the appropriate Records channel and request a wrecker through LESA Records;

- Forward the following information on the vehicle to LESA Records:
  - o Location;
  - o Vehicle Description (color, year, make, model, body, license, state);
  - o Owner or Officer request;
  - o Incident number;
  - o Whether an investigative hold is needed.

#### C) Reports (c)

Whenever an "Officer Requested" impound is made, the following shall apply:

- A report will be completed with the "Vehicle" section filled out;
- The reason for the Officer Requested Impound will be clearly described within the report narrative;
- Whenever a vehicle constitutes a traffic hazard, i.e., blocking a traffic lane with
  no responsible party to move the vehicle, the report will include a description of
  the hazardous condition that existed;
- When a collision is being investigated, a Police Traffic Collision Report may be used to document the impound of an involved vehicle;
- Consideration of reasonable alternatives will be documented;
- Officers will conduct an inventory of the vehicle, but will not access closed or locked containers, the trunk, or secured areas without a warrant permitting such. Closed or locked containers will be inventoried as a sealed unit unless exigent circumstances exist permitting a search of the container.

#### D) Tow Truck Cancellation

In the event the driver/owner arrives prior to the tow truck hooking up to the vehicle, the vehicle will be released without towing charges and the wrecker will be canceled. If, however, the wrecker has begun or completed hooking up, the name and address of the owner/ driver will be supplied to the wrecker driver for billing purposes prior to releasing the vehicle to the owner/driver.

#### E) Debris Removal at Accident Scenes

It is the tow truck operator's responsibility to clean glass and other debris caused by an accident from the street. Public Works should be called to clean debris only when tow trucks are not used at the scene.

#### F) Holds

An Investigative hold may only be used when a vehicle is impounded (towed on Officer's request). It will normally be used to hold a vehicle for evidence or processing. The tow truck driver must be advised that an Investigative hold has been placed on the impounded vehicle.

- Investigative Hold: The vehicle will be held for up to seven (7) days. After seven days, the vehicle may be released by the tow company. The hold may be extended by written request by the Detective assigned the case, and must state a specific hold termination date;
- Officers assigning an Investigative Hold will notify the Auto Theft CID Sergeant, who is responsible for the monitoring of all impounds and holds, via

- email(accessed in Outlook using 4CID-Holds for the recipient) and/or phone message (extension 5992). Officers will provide the case number, location of the vehicle, vehicle information and reason for the hold;
- Officers will make note in the narrative of the report if an Investigative hold has been placed on the impounded vehicle.

#### G) Release of Vehicle Holds

- The Detective assigned the case will be responsible to monitor the status of an impounded vehicle, and will be the sole individual authorized to release a vehicle hold;
- When a vehicle is to be released, the assigned Detective will fax or email the appropriate towing vendor. The assigned Detective will provide the case number, license plate and vehicle description. A copy of the fax or email will be placed into the case file.
- A Supplemental Report shall be prepared after a hold has been released, indicating what became of the vehicle.

In the event that a vehicle is to be held for processing only, the following shall apply:

- If the vehicle is held at an impound lot, the responding Forensics Technician will authorize the release of the vehicle;
- If the vehicle is at Department Headquarters, the Forensics Technician shall notify the assigned Detective or his/her Supervisor;
- The Identification Section will be responsible for notification to the follow-up unit (CID sergeant) as to the actions that have they have taken.

It will be the responsibility of the supervisor in charge of the follow-up unit to see that the preceding steps have been completed.

Supervisors and law enforcement personnel can monitor vehicles on Investigative hold via use of the Investigations Holds spreadsheet @ 4CID-Impounds. This spreadsheet is updated every Tuesday by 1600 hours.

Note: 4CID-Impounds is accessed in Outlook by selecting <u>File</u>, <u>Open</u>, <u>Select other users folder</u> then type in 4CID-Impounds, click ok.

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